



3737
PATENT
660057-2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Michael Conor MINOGUE
Michael Louis CROWE

U.S. Appln. No. : 09/902,287

U.S. Filing Date : July 10, 2001

Title of Invention : AN ELECTROTHERAPY DEVICE AND
METHOD

I hereby certify that this correspondence is being deposited with
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Washington, DC 20231, on April 17, 2002

Gordon M. Kessler Reg. No. 38,511

Name of Applicant, Assignee or Registered Representative

Gordon M. Kessler
Signature

4/17/02

Date of Signature

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**PETITION TO MAKE SPECIAL - INFRINGEMENT
INFORMATION DISCLOSURE STATEMENT, AND
REQUEST FOR INTERVIEW PRIOR TO FIRST OFFICE ACTION**

Assistant Commissioner for Patents
Box PATENT APPLICATION (35 U.S.C. 111)
Washington, D.C. 20231
Sir:

INFORMATION DISCLOSURE STATEMENT

The Examiner's attention is respectfully directed to the documents cited in the
accompanying PTO 1449 (submitted in duplicate). A copy of each of these documents is
attached for the application file.

The Examiner is respectfully requested to consider and make of record the documents
cited and return to the undersigned an initialed PTO 1449 showing that the documents have
indeed been considered and made of record.

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It is believed that no fee is due for entry of this Information Disclosure Statement as it is submitted prior to receipt of the first Office Action in this application. However, if any fee is required, the Assistant Commissioner is authorized to charge such fee, or credit any overpayment, against Deposit Account No. 50-0320.

PETITION TO MAKE SPECIAL - INFRINGEMENT

Pursuant to 37 C.F.R. §1.102 and MPEP §708.01 and § 708.02 (II) and any other Rules of the Commissioner and MPEP sections, Applicants respectfully petition to make this application special on the basis of infringement occurring by third parties. A check for \$130.00 in payment of the fee set forth in 37 C.F.R. §1.17(h) is enclosed; and, the Commissioner is hereby authorized to charge any additionally required fee for this petition or for making the application special or credit any overpayment in such fees to Deposit Account No. 50-0320.

The undersigned is an attorney registered to practice before the PTO, as required by MPEP §708.02.

A careful and thorough search of the prior art was made and the documents uncovered by that search are submitted herewith, as shown by the foregoing Information Disclosure Statement, as required by MPEP §708.02.

The present application claims a device for attaching electrodes to a subject for stimulating abdominal muscles by electrotherapy. According to one aspect, the invention provides an attachment means that can be extended around the torso of a user. The attachment means, that may be in the form of a belt, is provided with electrode locating means for locating at least three electrodes designed so that a central electrode may be located relative to the umbilicus of the subject and two side electrodes are located to the either side of the central electrode. When electrical pulses are applied to the electrodes electrical currents stimulate the subject's abdominal muscle groups. See Claim 1. The present application also claims that side electrodes are positioned toward the left and right mid-axillary lines of the subject. See, e.g., Claims 2-5. This positioning has been found particularly advantageous for exercising the rectus abdominus, the transversalis, and the oblique muscle groups using a minimum number of electrodes. See Specification, pages 14-16, and 27.

In addition, the application claims multiple locating means for positioning the side electrodes at different locations relative to the central electrode to accommodate subjects of

different girths. See Claim 12. The application also claims a method for stimulating abdominal muscles that comprises the steps of positioning three electrodes on the abdomen of a subject, one adjacent to the umbilicus and two located toward the mid-axillary lines and applying an electrical current between the electrodes. See Claim 52.

Applicants' assignee, Bio-Medical Research, Ltd. ("BMR"), has become aware of a competitor in the United States – The Dezac Group, Ltd. ("Dezac") – selling a electrical muscle stimulator device under the name RIO AB BELT, which is within the claims of the present invention. Dezac sells the RIO AB BELT in the United States through retailers that advertise on the world wide web. Attached as Exhibits A and B are pages from websites of retailers offering the AB BELT for sale in the United States.

Attached as Exhibit C is a copy of the instruction manual (the "Manual") provided along with the RIO AB BELT. As shown at page 3 of the Manual, the AB BELT includes a belt and control unit (1) and electrode pads (3). The electrode pads are connected to the inside surface of the belt by press studs, and can be positioned in two configurations, denoted "Position I – Inner Muscle Group" and "Position II – Outer Muscle Group." Manual at 4-6. The control unit is positioned on the outside of the belt, opposite the central electrode. Id. at 5. A photograph on the front cover of the Manual shows a model wearing the AB BELT with the control unit positioned at the center of her abdomen over her umbilicus. As discussed at page 5 of the manual, the control unit can be adjusted to deliver electrical pulses according to one of three selectable programs to stimulate the user's abdominal muscles.

A rigid comparison of the RIO AB BELT with the claims of the application reveals that at least some of the claims are unquestionably infringed. As compared with claims 1-5 and 52, the AB BELT provides an attachment means (i.e., a belt) with locating means (i.e., press studs) for attaching at least three electrodes, a central electrode and two side electrodes. See Manual at 4-6. When worn as instructed the central electrode is positioned adjacent to the user's umbilicus and the side electrodes are positioned toward the mid point of the mid-axillary lines of the user between the rib cage and the corresponding iliac crest. Id. at front cover and 6. Electrical pulses are applied to these electrodes to stimulate the user's abdominal muscles. Id. at 5. With respect to claim 12, there are two locating means for each side electrode, shown as Position I and Position II at page 6 of the Manual for accommodating users of different girths. Thus, at least some of the claims of the application are unquestionably infringed by the AB BELT.

Accordingly, it is respectfully submitted that all of the requirements of MPEP §708.02 (II) have been met, namely the petition fee is enclosed herewith and this paper is a petition to make special and:

- (1) That there is an infringing product actually on the market or methods in use;
- (2) That a comparison of the alleged infringing product, or methods with the claims of the application has been made, and that, in the opinion of the undersigned, some of the claims of the application are unquestionably infringed; and
- (3) That there has been a careful and thorough search of the prior art (with a copy of the references therefrom supplied herewith).

It is respectfully submitted that BMR is suffering by not having a U.S. Patent corresponding to the present application. Until a U.S. Patent corresponding to the present application issues, BMR is without any remedy to prevent infringement; and, without a U.S. Patent corresponding to the present application, BMR is faced with lost sales and revenue due to competitive products and methods within at least one claim of the present application.

Therefore, it is respectfully submitted that the present application qualifies for special status; and, according the present application special status is respectfully requested.

REQUEST FOR INTERVIEW

In addition, if there is any issue that presents an impediment to first action allowance of the present application, an interview is respectfully requested prior to any first Office Action on the merits.

Thus, Applicants respectfully request an interview prior to any first Office Action; and, the Examiner is respectfully requested to contact the undersigned prior to issuing any first Office Action to arrange a mutually convenient time and manner for such an interview.

Any additionally required fee or overpayment in any fee occasioned by this paper may be charged or credited to Deposit Account No. 50-0320.

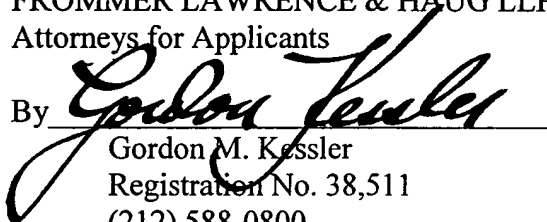
CONCLUSION

Early and favorable examination on the merits, special status, and first action allowance or an interview prior to any first Office Action (so any issues may be rapidly resolved), are all earnestly solicited.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicants

By



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ATTY. DOCKET NO.

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SERIAL NO.

09/902,287

LIST OF REFERENCES CITED BY APPLICANT

(Use several sheets if necessary)

APPLICANT

Michael Conor MINOGUE, et al.

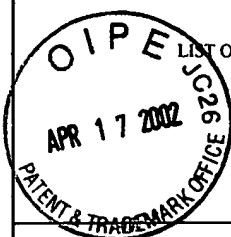
FILING DATE

July 10, 2001

GROUP

U.S. PATENT DOCUMENTS

EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE
	A	3,610,250	10/5/71	Sarbacher	128	379	
	AA	4,381,012	4/26/83	Russek	128	644	
	AB	4,432,368	2/21/84	Russek	128	644	
	AC	4,583,547	4/22/86	Granek et al.	128	639	
	AD	4,729,377	3/8/88	Granek et al.	128	639	
	AE	5,443,494	8/22/95	Paolizzi et al.	607	149	
	AF	5,904,712	5/18/99	Axelgaard	607	148	
	AG	5,922,012	7/13/99	Sakano	607	46	
	AH	6,341,237	1/22/02	Hurtado	607	148	
	AI	194,520	8/28/1877	J. Hobbs			
	AJ	226,658	4/20/1880	T.W. Graydon			
	AK	276,078	4/17/1883	J. Rittig			
	AL	279,881	6/19/1883	G.E. Palmer			
	AM	372,647	11/1/1887	J. Williams			
	AN	880,041	2/25/08	H.B. Renton			
	AO	2,110,392	3/8/38	E.L. Dorr			
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	AQ	2,943,628	7/5/60	W.L. Howell			
	AR	3,409,007	11/5/68	E.W. Fuller			
	AS	3,534,727	10/20/70	James A. Roman			
	AT	3,881,495	5/6/75	Pannozzo et al.	128	422	
	AU	4,354,509	10/19/82	Strahwald et al.	128	803	
	AV	4,365,634	12/28/82	Bare et al.	128	640	
	AW	4,381,789	5/3/83	Naser et al.	128	798	
	AX	4,422,461	12/27/83	Glumac	128	798	
	AY	4,509,535	4/9/85	Bryan	128	798	
	AZ	4,556,214	12/3/85	Petrofsky et al.	272	117	
	AAA	4,633,888	1/6/87	Yoneyama	128	784	
	AAB	4,708,149	11/24/87	Axelgaard et al.	128	798	
	AAC	4,763,660	8/16/88	Kroll et al.	128	640	



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	AAE	5,336,255	8/9/94	Kanare et al.	607	149	
	AAF	5,344,440	9/6/94	Stephen	607	139	
	AAG	5,397,337	3/14/95	Jaeger et al.	607	62	
	AAH	5,397,338	3/14/95	Grey et al.	607	115	
	AAI	5,487,759	1/30/96	Bastyr et al.	607	149	
	AAJ	5,601,618	2/11/97	James	607	71	
	AAK	5,622,168	4/22/97	Keusch et al.	128	640	
	AAL	5,674,261	10/7/97	Smith	607	46	
	AAM	5,823,989	10/20/98	Ostrow	604	20	
	AAN	5,871,534	2/16/99	Messick et al.	607	138	
	AAO	5,916,159	6/29/99	Kelly et al.	600	390	
	AAP	5,947,897	9/7/99	Otake	600	372	
	AAQ	5,995,861	11/30/99	Price	600	37	
	AAR	6,002,965	12/14/99	Katz et al.	607	48	
	AAS	6,094,599	7/25/00	Bingham et al.	607	149	
	AAT	6,151,528	11/21/00	Maida	607	149	
	AAU	6,324,432	11/27/01	Rigaux et al.	607	62	
	AAV	DES420,138	2/1/00	Robinette	D24	200	

FOREIGN PATENT DOCUMENTS

		DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION	
							YES	NO

OTHER PRIOR ART (Including Author, Title, Date, Pertinent Pages, Etc.)

EXAMINER

DATE CONSIDERED

* EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.